

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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January 9, 2009

**TO:** Commissioners and Alternates

**FROM:** Will Travis, Executive Director (415/ 352-3653 [travis@bcdc.ca.gov](mailto:travis@bcdc.ca.gov))  
Karen Wolowicz (415/ 352-3669, [karenw@bcdc.ca.gov](mailto:karenw@bcdc.ca.gov))

**SUBJECT:** **Staff Recommendation on BCDC Permit Application No. 2-06, California Department of Corrections and Rehabilitation**  
(For Commission consideration on January 15, 2009)

## Recommendation Summary

The staff recommends that the Commission approve the California Department of Corrections and Rehabilitation's (CDCR) BCDC Permit Application No. 2-06 to construct a portion of a condemned inmate housing project at the San Quentin State Prison in an unincorporated area of Marin County. Approval of the recommendation, as conditioned, will result in the following:

1. Construction, use and maintenance of a guard tower, gun locker building, a portion of a paved road and a lethal electrified security perimeter fence;
2. Placement, use and maintenance of approximately 2,613 square feet (329 yards) of solid fill in the Bay for a new stormwater outfall;
3. Establishment and use of a construction staging area for approximately two years;
4. Construction, use, and maintenance of a public access area located on Main Street in San Quentin Village, including two to three parking spaces, landscaping, a viewing platform and interpretive display, a short path, and two seating areas; and



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5. Contribution of \$900,000 to the Transportation Authority of Marin to provide off-site public access. The money will be used to help fund Phase One of the \$20 million, Central Marin Ferry Connection.

### Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

#### I. Authorization

- A. Subject to the conditions stated below, the California Department of Corrections and Rehabilitation is hereby granted permission to construct the following, in the vicinity of San Quentin State Prison and San Quentin Village, unincorporated areas of Marin County, Marin County, near the City of Larkspur:

1. **In the Bay:**

- a. Place, use, and maintain in-kind approximately 2,613 square feet (329 cubic yards) of solid fill for a new stormwater outfall.

2. **Within the 100-foot shoreline band:**

- a. Construct, use and maintain a 170-square-foot guard tower and a 130-square-foot gun locker building;
  - b. Place, use and maintain a 4,500-square-foot portion of a paved road and a 1,025-foot-long section of 14.5-foot-high lethal electrified security perimeter fence;
  - c. Establish and use a 109,000-square-foot (2.50 acre) construction staging area and remove upon project completion (approximately two years after project commencement date); and
  - d. Construct, use and maintain a public access viewing area immediately east of San Quentin Village consisting of: (1) a two-to-three car parking area one of which will be ADA-compliant; (2) a barrier-free viewing platform with a bench and interpretive signage with native landscaping; and (3) a 15-foot-wide, 50-foot-long gravel maintenance road, an adjoining path, a security barrier to prevent unauthorized vehicle access to the maintenance road; and (4) a security gate to prevent access to the historic water system jetty.

#### II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

##### A. Specific Plans and Plan Review

1. **Plan Review.** The plans for the outfall, guard tower, gun locker building, paved road, security fence and staging area authorized herein shall generally conform with the plan entitled "San Quentin Conceptual Design, Proposed Public Access Plan;" prepared by EDAW, as revised through January 8, 2009. No changes to the design of the project shall be made without the prior written approval by or on behalf of the Commission.

Work at Main Street in San Quentin Village shall not commence until final precise site, architectural, grading, and best management practices plans and any other

relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission. The Commission staff will determine the specific drawings and information required. To save time, preliminary drawings should be submitted and approved prior to final drawings.

The public access and landscaping plans shall include and clearly label the shoreline (Mean High Water Line), the line 100 feet inland of the line of the shoreline, property lines, the boundaries of all areas to be reserved for public access purposes, grading, details showing the location, types, dimensions, and materials to be used for all improvements, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements.

2. **Conformity with Final Approved Plans.** All work, improvements, and uses shall conform to the final approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed feature, lighting, landscaping, signage, or parking area without first obtaining written approval of the change(s) by or on behalf of the Commission. No work whatsoever shall be commenced pursuant to this authorization until final precise site plans, including, grading, and best management practices plans, and any other relevant criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the Commission.
  3. **Discrepancies Between Final Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and Special Conditions of this authorization approved pursuant to this authorization, the Special Condition shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the Special Conditions of this authorization.
- B. **Public Access.** The public access to be provided as part of the project authorized herein shall consist of two components: (1) a \$900,000 contribution to complete Phase One of the Central Marin Ferry Connection Project, which will improve bicycle and pedestrian access near Sir Francis Drake Boulevard (SFDB) and Highway 101 through improvements along SFDB and construction of a bridge over SFDB; and (2) construction of a small parking area and viewing overlook immediately east of San Quentin Village.
1. **Monetary Contribution for Development of In-Lieu Public Access.** Within 180 days of issuance of this permit, or as soon as construction funding is authorized, following signing of an agreement between The Transportation Authority of Marin (TAM) and the Commission regarding how the funds shall be disbursed and within what time frame, the Department of Corrections and Rehabilitation (CDCR) shall deposit \$900,000 in an interest bearing account administered by the TAM. These funds shall be disbursed, in their entirety, including principal and interest, solely to TAM, for the purpose of developing Phase One of the Central Marin Ferry Connection (CMFC) Project.

Phase One of the Central Marin Ferry Connection Project is located parallel to Highway 101 and generally along the Sonoma Marin Area Rail Transit right-of-way near SFDB in the City of Larkspur, Marin County. It extends from the southern end of the CalPark Hill tunnel across SFDB, connecting to the bike/ pedestrian trail along

the southern edge of SFDB (Exhibit A). Phase One of this project will provide the final bicycle and pedestrian link from the San Rafael Transit Center to the Larkspur Ferry Terminal. The total cost to implement Phase One is estimated at \$11.7 million. Phase One includes bicycle and pedestrian improvements along SFDB and construction of a bicycle and pedestrian bridge over SFDB. Engineering plans and environmental review for this project are scheduled to be completed in summer 2009. Construction for Phase One is scheduled to commence in 2010 and be completed by 2012. Reopening the CalPark Hill tunnel is scheduled to be completed in 2009.

The funds provided by the CDCR shall be disbursed by TAM after approval by or on behalf of the Commission's Executive Director. If the development of Phase One by TAM authorized herein does not involve use of the entire \$900,000, or if the monies have not been utilized by TAM within three years of issuance of this permit (January 15, 2012), any remaining money will be used to fund other public access improve-

ments in the general vicinity of San Quentin Prison, as approved by or on behalf of the Commission. A reasonable portion of the funds (as determined by or on behalf of the Commission) may be retained by TAM to cover the administrative costs of processing the grant of \$900,000.

## 2. **Main Street Public Access Viewing Area**

a. **Improvements.** Prior to the use of the outfall or the guard tower, or by September 1, 2011, whichever occurs earlier, the permittee shall install, use and maintain the following improvements located northeast of the historic San Quentin State Prison Saltwater Pumphouse located on Main Street, as generally shown on attached Exhibit B:

- (1) A parking lot with two or three parking spaces, one of which shall be barrier-free;
- (2) A barrier-free sidewalk leading from the parking lot to a barrier-free view platform with associated landscaping;
- (3) A five-foot-wide path adjacent to the 15-foot-wide maintenance road leading from the viewing area to the saltwater pumphouse with a security gate at the entrance;
- (4) A landscaped small seating area adjacent to the saltwater pumphouse;
- (5) At least three interpretive signs providing a narrative and photos of the historic water system, the saltwater pumphouse, and the prison and at least one way-finding map to public access features in the project vicinity; and
- (6) Fencing to be installed at the historic water system jetty as this structure has been determined to be unsafe for the public.

Such improvements shall be built to reflect the historic architectural theme of the pumphouse, be consistent with the plans approved pursuant to Special Condition II-A of this authorization and substantially conform to the plans entitled "Main Street Improvements," dated January 8, 2009, prepared by California Department of Corrections and Rehabilitation. The improvements shall also be built so as to assure that future opportunities to restore and reuse the pumphouse are not foreclosed.



action by or on behalf of the Commission prior to any future change of use or work within areas filled pursuant to this authorization.

- F. **Recording.** The permittee shall record this permit or a notice specifically referring to this permit on all parcels affected by this permit with Marin County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide evidence of recordation to the Commission.
- G. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein, have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.
- H. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/ he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.

### III. Findings and Declarations

- A. This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the California Environmental Quality Act, and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

- 1. **Bay Fill.** The Commission may allow fill only when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part: (a) fill in the Bay should be limited to water-oriented uses, such as wildlife refuges or minor fill for improving shoreline appearance or for public access; (b) no alternative upland location exists for the fill; (c) the public benefits from fill must clearly exceed the public detriment from the loss of water areas; (d) the fill should be the minimum amount necessary to achieve the project purpose; and (e) the nature, location, and extent of any fill should minimize harmful effects to the Bay including the water volume, circulation, and quality, fish and wildlife resources, and marsh fertility.

The only fill associated with the project involves the construction of an outfall that will total 329 cubic yards of solid fill and will result in the loss of approximately 2,613 square feet of Bay surface area. The CDCR states that the fill for the outfall structure is a water-oriented use with no alternative upland location since it is needed to drain stormwater into the Bay. Further, because the outfall is located where drainage naturally occurs at the site, it would be more costly and not practical to direct drainage to an alternative location. CDCR further states that the fill is the minimum amount necessary for an outfall sufficient to drain anticipated runoff and, moreover, Bay resource impacts will be negligible because the fill will be placed in a shoreline already altered by riprap. The Regional Water Quality Control Board granted the applicant a Water Quality Certification on December 14, 2005 for the stormwater outfall. To assure that construction impacts do not add to fill in the Bay Special Condition II-D requires the removal of all construction debris that falls into

the Bay.

Because the amount of fill that will be placed in the Bay is for a water-oriented use, is the minimum amount necessary, has no upland alternative location, and will not adversely impact Bay resources the Commission finds that the stormwater outfall is consistent with the McAteer-Petris Act and the Commission's policies on fill in the Bay.

2. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states that "...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." The Bay Plan Public Access Policy 2 states, in part: "...maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided." The Bay Plan Public Access Policy 6 states, in part: "[p]ublic access improvements provided as a condition of any approval should be consistent with the project and the physical environment...and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline should permit barrier free access for the physically handicapped to the maximum feasible extent, include an ongoing maintenance program, and should be identified with appropriate signs." The Bay Plan Public Access Policy 8 also states, in part: "[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available." The Bay Plan Public Access Policy 10 states, "[f]ederal, state, regional and local jurisdictions, special districts, and the Commission should cooperate to provide appropriately sited, designed and managed public access, especially to link the entire series of shoreline parks, regional trail systems (such as the San Francisco Bay Trail) and existing public access areas to the extent feasible." The Bay Plan Policy 11 also states that, "[t]he Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board should advise the Commission regarding the adequacy of the public access proposed."

In assessing whether a project provides maximum feasible public access consistent with the project, the Commission relies on the McAteer-Petris Act, the policies of the Bay Plan, and also relevant court decisions. In assessing whether a *public* project, such as the San Quentin Condemned Inmate facility, will provide the maximum feasible public access consistent with the project, the Commission should evaluate whether the public access is *reasonable* given the scope of the project.

Since the site is a maximum-security prison, it has not been accessible to the public for more than a century. The Department of Corrections and Rehabilitation (CDCR) contends that providing access through the prison grounds, which includes the shoreline, is infeasible because of public safety considerations and obvious use

conflicts. For these reasons, from the beginning, the focus was to develop a public access proposal off-site, preferably as close to San Quentin as possible.

When the project was first discussed with Commission staff in May 2006, three possible areas for public access were considered. These public access opportunities included: (1) improving an area at the prison's west gate that is heavily used by windsurfers (i.e., improving parking, lay down areas, and access to the Bay shoreline); (2) improving access to California Department of Fish and Game's Corte Madera Ecological Preserve in Marin County lying south of Corte Madera Creek (i.e., improving parking, providing trails and marsh overlooks); and (3) constructing two view overlooks, one on the hillside above San Quentin Village and the other on Main Street in San Quentin Village.

The CDCR determined that improvements to the windsurfing area presented major safety issues to the public and security issues for the prison. Due to the proximity of the informal windsurfer launch to the prison, windsurfers often are blown onto the prison shoreline, close to the perimeter fence, creating safety concerns. The prison rescues the windsurfers landing on its property, but does not want to improve windsurfer access out of concern that increased windsurfer use would increase the number of stranded windsurfers along the prison's shoreline, thereby adding to existing security and safety concerns.

Consideration of improving access at the Corte Madera Ecological Preserve was dropped when discussions with the Department of Fish and Game (DFG), which manages the Corte Madera Ecological Preserve, indicated that DFG had neither the staff resources nor interest in providing, policing and maintaining increased public access to the ecological preserve.

For these reasons, CDCR focused developing a public access proposal on prison property at the east side of the prison, east of San Quentin Village. Its initial proposal involved constructing two overlooks, one on the hill overlooking the approach to the Richmond San Rafael Bridge, the other near the saltwater pumping station on Main Street. Conceptual plans were developed for these overlooks and it was determined that constructing both proposed improvements would cost approximately \$932,000 to implement. With further evaluation, however, CDCR decided not to pursue the overlook on the hill because: (1) of the difficulty of making the hillside viewing area and associated trail ADA-compliant; (2) the expense of stabilizing the hillside and grading and maintaining the trail to the overlook; (3) security concerns associated with the proximity of the view overlook to the prison's drinking water reservoir; and (4) opposition from San Quentin Village residents regarding providing access above their homes.

In May 2007, the CDCR returned to the Commission staff with a revised public access proposal consisting of a public viewing overlook and associated parking near the saltwater pumphouse, and a sidewalk along Main Street. The Commission's Design Review Board (DRB) found this public access proposal to be "modest." Subsequently, the CDCR modified their public access proposal so that it simply involved contributing \$932,000 to improve public access in the vicinity. The funds could be used to construct the Main Street viewing platform or some other public access project approved by the Commission.



Shortly thereafter CDCR withdrew its application, resubmitting it in fall 2008. The resubmitted application proposed a \$932,000 contribution to a public access project of the Commission's choosing. CDCR identified three public access projects near San Quentin where the money could potentially be used: (1) the proposed public viewing area near the saltwater pumphouse (described in detail previously with an estimated cost of \$810,000); (2) Phase One of the Central Marin Ferry Connection which would construct a bike/ pedestrian trail from the southern end of the CalPark Hill tunnel, over Sir Francis Drake Boulevard and connecting to the existing bike/ pedestrian trail running along Sir Francis Drake Boulevard to the Ferry Terminal to the east and to the Village at Corte Madera shopping center to the west. With an estimated cost of \$11.7 million, completion of this project would provide the final bicycle/ pedestrian link from the San Rafael Transit Center to the Larkspur Ferry Terminal; and (3) extending the bike/ ferry trail along Sir Francis Drake Boulevard from its existing terminus (near Remillard Park), inland around the prison and along a 0.4 mile section of Highway 580 to Main Street and the eastern gate of San Quentin Village.

Each of the above-described three public access projects has merit. The Bay Plan's public access policies state that when on-site public access is determined to be infeasible, "...in lieu access at another location preferably near the project should be provided." This policy favors the public access overlook at the salt water pumphouse or the bike/ pedestrian trail extension along Sir Francis Drake Boulevard around the inland side of the prison. However, planning for the Sir Francis Drake Boulevard trail extension has not begun, right-of-way considerations have not been evaluated (potentially a problem along the entire route), little of the route is along the Bay, and there is no cost estimate or timetable for completing the trail. The Main Street public access overlook, while on prison property and along the Bay shore, would not likely attract much public use in the short term, and the neighboring community expressed concerns that improved public access at this site could lead to parking problems in the community, and to vandalism and increased noise. Contributing funds toward the Phase One Central Marin Ferry Connection project would help fund a key bike/ pedestrian connection, linking the San Rafael Transit Center with the Larkspur Ferry Terminal and existing trails along Corte Madera Creek. This proposal has wide community support and would likely be heavily used. But this project has not completed the required environmental analysis nor received all government approvals (though it has already begun this review process and it is expected to commence construction by 2010). This project is also the farthest from the prison of the three alternatives (approximately 0.5 miles), and only a small section is along the Bay. No other public access proposals have come to light since the application summary for this project was circulated on December 5, 2008.

In evaluating the consistency of the CDCR public access proposal with the Commission's law, policy and past practices, the Commission compared CDCR's proposal with other large projects where in lieu public access was required. For example, the Fifth Avenue Highway 880 project (BCDC Permit No. 3-05 to Caltrans) involved retrofitting a segment of Highway 880 at an estimated cost of \$110 million. The retrofit included placing a 19,217-square-foot (0.44 acres) pile-supported highway deck in the Lake Merritt Channel, part of the Bay. The project would interrupt the public's use of an existing public access trail below the highway during

construction. Caltrans initially proposed replacing the access disturbed during construction, extending it to better connect to nearby streets, and contributing \$500,000 for public access improvements in the project area. The Commission approved the project but increased the in-lieu public access contribution to \$1 million for public access improvements in the City of Oakland.

In 2002 and 2005, the Commission approved two Caltrans applications to expand two different sections of Highway 101. One project (BCDC Permit No. 3-02) located in the City of Larkspur, Marin County, included placing 16,469-square-feet of fill in Corte Madera Creek to widen Highway 101 to include HOV lanes at an estimated total project cost of \$52 million. The project interrupted use of a popular bicycle and pedestrian route along Corte Madera Creek during construction. The permit required replacing the section of the trail lost to construction, extending the trail to improve connections to nearby trails, adding 33,080 square feet to expand the public access area along Corte Madera Creek, and contributing \$400,000 to be used for public access improvements in the project vicinity.

BCDC Permit No. 7-04 authorized the expansion of Highway 101 along a 4.4-mile stretch in San Mateo County (in the Cities of Burlingame and San Mateo) with an estimated project cost of \$75 million. Approximately a 2,300-foot-long, 6.88-acre (299,693 square feet) section of the highway would be constructed within the shore-line band. The Commission authorized the project, which included construction of a new Class 1 bike/ pedestrian overcrossing over the Freeway (connecting existing Bayshore access with inland neighborhoods), and improved bike/ pedestrian access on a reconstructed portion of an existing freeway overcrossing. The estimated cost of these public access improvements was \$2.6 million.

The following table summarizes the above-referenced Commission decisions. The last row of the table summarizes the public access related to the subject San Quentin Condemned Inmate facility:

<b>Project</b>	<b>Total Project Cost</b>	<b>Amount of Work in BCDC Jurisdiction</b>	<b>Public Access Improvements</b>	<b>Monetary Contribution</b>
Caltrans Highway 880 Retrofit (City of Oakland), BCDC Permit No. 3-05	\$110 million	Bay fill for pile supported highway deck: 0.44 acres	52,302 square feet of pedestrian and bicycle access	\$1 million
Caltrans Highway 101 HOV lane gap closure (City of Larkspur), BCDC Permit No. 3-02	\$52 million	Bay fill for widening HOV lane: 0.38 acres	33,080 square feet of improved bicycle and pedestrian lanes and connections	\$400,000
Highway 101 expansion (Cities of Millbrae and Burlingame, San Mateo County), BCDC Permit No. 7-04	\$75 million	Shoreline band fill for installing auxiliary lanes and associated improvements: 6.88 acres	Trail improvements and a new pedestrian and bicycle overpass (sq. footage unknown)	\$0
Department of Corrections and	\$337	Bay fill for an	Main Street Improvements, including a	\$900,000

Rehabilitation Proposed San Quentin Condemned Inmate Facility- Marin County BCDC Application No. 2-06	million	outfall: 0.06 acres  Shoreline band fill for a guard tower, fencing, gun locker and paving: 0.45 acres	view platform, park- ing, and seating	
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The Commission finds that construction of a small viewing area and parking lot on Main Street adjacent to the salt water pumphouse, combined with a contribution of \$900,000 toward construction of the Phase One Central Marin Ferry Connection project, constitutes the maximum feasible public access consistent with the proposed project. While too small to serve more than a few people at a time, the viewing area on Main Street adjacent to the salt water pumphouse provides a unique opportunity to provide access near the prison, to interpret a unique and historic resource (the salt water pumphouse and the prison), to provide superb views of the Central Bay (these views are entirely different from the views afforded at the recently completed viewing area on the north side of the Richmond San Rafael Bridge approach), and to expand existing required public access on the neighboring beach. The access has been revised to be modest in scale, include security elements to protect the historic pumphouse and public safety, and to restrict car access to a small area. Yet this access alone is insufficient for the Commission to find that the \$337 million condemned inmate housing project provides the maximum feasible public access consistent with the project. By requiring that CDCR also contribute \$900,000 toward completion of a project that will provide a critical link in bike/ pedestrian access to the Larkspur Ferry Terminal and along Corte Madera Creek from San Rafael, the Commission finds that the combination of on-site public access at the salt water pumphouse and the in lieu public access contribution is comparable to that of other large projects where in lieu public access was a significant component of the project's public access proposal.

2. **Appearance, Design and Views. Appearance, Design and Scenic Views.** The Bay Plan Appearance, Design, and Scenic Views Policy 1, states, in part: “[t]o enhance the visual quality of development around the Bay and to take maximum advantage of the attractive setting it provides, the shores of the Bay should be developed in accordance with the Public Access Design Guidelines.” The Bay Plan Appearance, Design, and Scenic Views Policy 2, states, in part: “[m]aximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.” The Bay Plan Appearance, Design, and Scenic Views Policy 4, states, in part: “[s]tructures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline. In particular, parking areas should be located away from the shoreline. However, some small parking areas for fishing access and Bay viewing maybe allowed in exposed locations.” The Bay Plan Appearance, Design, and Scenic Views Policy 12, states, in part: “[i]n order to achieve a high level of design quality, the Commission's Design Review Board ...should review, evaluate, and advise the Commission on the proposed design of developments that affect the appearance of the Bay....”

A small portion of the condemned inmate housing project will be located within the 100-foot shoreline band, namely portions of a guard tower, gun locker building, paved road and security fence. The larger project including the new condemned inmate housing facility will alter views of the Bay from Sir Francis Drake Boulevard, Paradise Drive, and Highway 101, and views of the shoreline from the Bay. However, nearly all of these improvements are located outside the Commission's jurisdiction. Nonetheless, CDCR attempted to design the building height and mass to maximize public views of the Bay from Sir Francis Drake Boulevard, which the Bay Plan designates as a scenic route. Further, the CDCR altered the design of the buildings to visually complement views to and from the Bay and it reduced the height and the glare of the on-site lighting system since receiving comments on the Draft Environmental Impact Report (EIR) for the prison facility and from the Commission's Design Review Board in April 2007.

At the Commission's public hearing on December 18, 2008, concern was expressed about removing Dairy Hill, which currently shields homeowners on the Greenbrae Boardwalk from directly viewing the prison.

The EIR for the project considered preserving Dairy Hill, and evaluated alternative design schemes that preserved the hill. However, it was determined that preserving on-site historic employee housing was more important than preserving the hill. Preserving the hill would have also resulted in taller prison building profiles, further impacting views from Sir Francis Drake Boulevard.

Finally, the small two-to-three public access parking lot serving the Main Street public access area constitutes a small parking area for Bay viewing, in accord with the *Bay Plan's* policies. As conditioned, the Commission finds that the project will be consistent with the Bay Plan's policies on appearance, design, and scenic views.

## **B. Review Boards**

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not evaluate the project because no structures that could directly lead to loss of human life are located on Bay fill.
2. **Design Review Board.** On April 9, 2007, Commission's Design Review Board (DRB) reviewed the original proposal for the Main Street viewing platform and sidewalk improvements, which are similar in location, design, and concept to the Main Street improvements required in Special Condition II-B. The DRB asked for more details on the proposed public access, expressed concern about the limited scope of the proposal, and characterized the public access plan as "modest." The DRB supported the City of Larkspur's concern regarding the architectural quality and appearance and design of the proposed prison buildings located outside of the Commission's jurisdiction noting that the prison is a visual landmark. The DRB requested that the permittee look into improving the shoreline at the project site by designing the landscaping, lighting, fencing, and other shoreline improvements along the Prison edge. It also suggested that the permittee prepare a comprehensive shoreline plan describing its shoreline public access improvements in relation to the Caltrans facility near the Richmond-San Rafael Bridge to Sir Francis Drake Boulevard.

Since the DRB's review of the original public access proposal in April 2007, the permittee altered the exterior of the new prison building design to better reflect the

architectural details of the existing historic buildings at the site. Further CDCR reduced the height of the high exterior mast lighting from 100 feet to 60 feet, and glare shields have been incorporated.

Regarding the DRB's suggestion about the preparation of a plan to improve the shoreline in the general area of the project site, the permittee is constrained by a Section 10(a) of the Endangered Species Act federal incidental take permit, and related requirements, granted in 2002 for its Habitat Conservation Plan (HCP). The HCP requires that the permittee make the environment adjacent to the lethal electrified perimeter fence unattractive to wildlife. Further, the *Statewide Electrified Fence Project handbook for Reducing Wildlife Use of Prison Perimeters*, dated August 1996, stipulates that the area between the prison's patrol road and the outer electrical fence, and the first 100 feet of vacant state property outside of the patrol road, should be mostly free of non-native vegetation, including weedy species. Thus, the permittee will not provide shoreline improvements along the prison's shoreline.

Since the DRB review in April 2007, the permittee made the Main Street improvements even more modest than originally proposed, have augmented their public access proposal to include \$900,000 contribution to the Transportation Authority of Marin for Phase One of the Central Marin Ferry Connection, a significant public access improvement. In addition, since the DRB's review of the project, a public access viewing overlook north of the Richmond-San Rafael Bridge has been completed, which provides a significant view platform near the project.

- C. **Environmental Review.** In May 2005, the Department of Corrections and Rehabilitation, acting as the lead agency under the California Environmental Quality Act, certified the Final Environmental Impact Report (EIR) for the project.

The Main Street public access improvements involve a small amount of new construction (the paving and striping of a parking area, the construction of a view area, the placement of gravel on an existing dirt road, and installation of a gate and fence to limit access to a sensitive and unsafe area). Because these improvements will be built within an already disturbed area, will not change the historic landscape setting of the nearby pumphouse, will be constructed above the Mean Higher High Water line, and will not adversely impact any known sensitive resources, the public access improvements on Main Street in San Quentin Village, are categorically exempt from the requirement to prepare an environmental impact report, pursuant to Article 19, Section 15301(h) and 15303(e) of the California Environmental Quality Act (CEQA).

- D. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

#### IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee executes the original of this permit and return it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Notice of Completion.** The attached Notice of Completion and Declaration of

Compliance form shall be returned to the Commission within 30 days following completion of the work.

- C. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee/ transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- D. **Permit Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- E. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.
- F. **Built Project must be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- G. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- H. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "Bay" jurisdiction.
- I. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- J. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation

of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignee if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or its assignee if the permit has been assigned.

- K. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignee if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- L. **Permission to Conduct Site Visit.** The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.